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prior convictions of one John Smith were recited in the indictment. The state offered no proof that the prisoner in the former convictions was the defendant in this prosecution, but relied on the presumption of identity of person arising from identity of names. *Held,* against one dissenting vote, that this presumption does not obtain for the present purpose against a person accused of crime, and that other proof of identity must be given. *State* v. *Smith* (1906), — Ia. —, 106 N. W. Rep. 187.

The rule that identity of names is prima facie evidence of identity of persons obtains generally in criminal proceedings as well as civil. *Garrett* v. *State,* 76 Ala. 18; *People* v. *Rolfe,* 61 Cal. 540. So where it is sought to discredit the prisoner as a witness by showing that he was once convicted of crime, the identity of his name and the name in the prior conviction is prima facie evidence of identity of person. *State* v. *McGuire,* 87 Mo. 642. But when former convictions are offered in order to aggravate the crime of which the prisoner then is charged, the presumption that the person is the same because the names are identical, does not obtain. *Com.* v. *Briggs et ux.,* 5 Pick. 428; *State* v. *Lashus,* 79 Me. 504. For no presumption shall be indulged against a person accused of crime. There is one case contra: *State* v. *Kelsoe,* 11 Mo. App. 91, where it is said that the unrebutted presumption is proof enough of the identity of person. Even so the present majority decision seems right for a reason not mentioned by the court—the commonness of the prisoner's name. The presumption of identity of person is rebutted by the common character of the name. *Garrett v. State,* supra; *Jones* v. *Jones,* 9 M. & W. 75.

DEEDS—CAPACITY OF GRANTOR AS COMPARED WITH THAT OF TESTATOR.—Where the plaintiff requested the court to instruct the jury that "It requires more mental capacity to execute a deed than a will," which the court refused, and the plaintiff took exceptions, it was *held* that the instruction suggested an abstract and collateral question not involved in the issues of the trial and therefore was correctely refused, but the court nevertheless discussed the proposition and was of the opinion that there was no good reason why a different standard of mental capacity should be established for deeds than wills. *Bond et al.* v. *Branning Mfg. Co.* (1906), — N. C. —, 52 S. E. Rep. 929.

While there is considerable authority for the court's view on the question of capacity (*Coleman* v. *Robertson Exrs.,* 17 Ala. 84; *Terry* v. *Buffington,* 11 Ga. 337, 56 Am. Dec. 423; *Davis* v. *Calvert,* 25 Am. Dec. 282), the weight of authority seems to be the other way. *Harrison* v. *Rowan,* Fed. Cases No. 6,141 (3 Wash. C. C. 580); *Aubert* v. *Aubert,* 6 La. Ann. 104; *Brinkman* v. *Rueggesick,* 71 Mo. 553; *Ring* v. *Lawless,* 190 Ill. 520, 60 N. E. 881; *Kerr* v. *Lunsford,* 31 W. Va. 659, 8 S. E. 493, 2 L. R. A. 668. This latter case holds explicitly that an instruction that it requires less capacity to make a will than it does to make a deed is correct. The reason given for this view is that when one makes a deed his mind is opposed by another mind, while the same is usually not the case with one who makes a will.